



June 25, 2001

Mr. Brett Bray
Division Director, Motor Vehicle Division
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2001-2681

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148718.

The Texas Department of Transportation (the "department") received a request for (1) the motor vehicle dealer license applications for North Texas Autoplex (the "Autoplex"), (2) documents bearing the name of individuals associated with the Autoplex, (3) correspondence between the department and the Autoplex, and (4) any bonds or other surety posted by the Autoplex. You indicate that the department released most of the information, but withheld driver's license numbers and social security numbers from the information released. In response, the requestor has indicated that he would like to receive the driver's license numbers that were redacted by the department. You claim that the requested driver's license numbers are excepted from disclosure under section 552.130 of the Government Code. The requestor has also submitted comments in support of the release of the information. We have considered all of the arguments and reviewed the submitted information.

We begin by noting that you did not comply with section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

It appears from the documents submitted to this office that the department received the original request for information on April 4, 2001. You did not request a decision from this office until April 20, 2001. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). Section 552.130 of the Government Code can provide a compelling reason for overcoming the presumption of openness. See, e.g., Open Records Decision No. 150 (1977) (information made confidential by law or that affects third party interests may provide compelling reason for withholding under statutory predecessor to section 552.302).

Section 552.130 provides, in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

...

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Thus, the requested driver's license numbers are generally excepted from disclosure under section 552.130(a). However, the requestor indicates that he is entitled to receive the driver's license numbers under section 730.007 of the Transportation Code. Section 730.007 provides, in relevant part:

(a) Personal information obtained by an agency in connection with a motor vehicle record may be disclosed to any requestor by an agency if the requestor:

(1) provides the requestor's name and address and any proof of that information required by the agency; and

(2) represents that the use of the personal information will be strictly limited to:

...

(D) use in conjunction with a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in, anticipation of litigation, execution or enforcement of a judgment or order, or under an order of any court;

(H) use by a licensed private investigator agency or licensed security service for a purpose permitted under this section;

Transp. Code § 730.007(a). “Personal information,” as used in section 730.007, includes a “driver identification number.” *Id.* § 730.003(6). “Motor vehicle record” is defined as “a record that pertains to a motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document.” *Id.* § 730.003(4). Although it is clear that the requested driver’s license numbers are “personal information” for the purpose of section 730.007(a), we cannot determine whether these numbers were obtained in connection with “motor vehicle records.”

Here, the requestor indicated in his correspondence with the department that the information is sought by the requestor’s “private investigations firm ... in preparation for a civil action in a Texas court.” Furthermore, the requestor provided the department both his name, the name of his company, and his address. Thus, to the extent the requested driver’s license numbers were obtained in connection with “motor vehicle records,” as defined under section 730.003(4), and to the extent the requestor has provided the department with any proof of his name and address that the department may require, the department has the discretion to release the requested driver’s license numbers to the requestor. *See id.* § 730.007(a); Gov’t Code § 311.016. However, the department is not required to release the driver’s license numbers, even if the criteria in section 730.007(a) are met. Furthermore, if the driver’s license numbers were not obtained in connection with “motor vehicle records,” as defined in section 730.003(4), or if the requestor has not provided any required proof of his name and address, the department must withhold the numbers under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

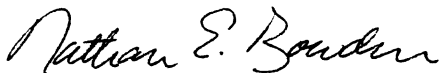
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 148718

Enc. Submitted documents

c: Mr. Mike Coffey
P.O. Box 101142
Fort Worth, Texas 76185
(w/o enclosures)